

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
APPELLATE DIVISION OF ST. CROIX**

GOVERNMENT OF THE VIRGIN ISLANDS, )  
Plaintiff/Appellee, ) **D.C. CRIM. App. No. 1999/014**  
)  
v. ) Re: T.C. CRIM. No. 210/1998  
)  
CHRISTOPHER ALEXANDER, )  
Defendant/Appellant. )  
\_\_\_\_\_ )

On Appeal from the Territorial Court of the Virgin Islands

Considered: March 24, 2000  
Filed: June 1, 2000

**BEFORE:** **RAYMOND L. FINCH**, Chief Judge of the District Court of the Virgin Islands; **THOMAS K. MOORE**, Judge of the District Court of the Virgin Islands; and **IVE A. SWAN**, Territorial Court Judge, Division of St. Thomas/St. John, Sitting by Designation.

**APPEARANCES:**

**Ivan A. Guzman, Esq.**  
St. Croix, U.S. Virgin Islands  
Attorney for Appellant,

**Maureen Phelan Cormier, Esq.**  
St. Thomas, U.S. Virgin Islands  
Attorney for Appellee.

**JUDGMENT OF THE COURT**

PER CURIAM

**THIS MATTER** is before the Court on Christopher Alexander's ("appellant" or "Alexander") appeal of his conviction of robbery in the first degree. Appellant alleges that the jury should not have been allowed to view the photographic array because the victim was shown the array after he was in custody, and his Sixth Amendment

Right to have counsel present at certain critical stages, including pretrial identification, was violated. The presence of counsel, he contends, would have prevented the suggestive use of a lineup. Appellant, therefore, contends that the trial court erred in ruling that the photo array was not suggestive.

The Supreme Court of the United States recognized the realities of modern criminal prosecution and determined that the Sixth Amendment right to counsel applies to "critical" stages of the proceedings. *Ash*, 413 U.S. at 310, 93 S.Ct. at 2574 (quoting *United States v. Wade*, 388 U.S. 218, 224, 87 S.Ct. 1926, 1931 (1967) (footnote omitted)). Critical stages have been defined as "those links in the prosecutorial chain of events in which the potential for incrimination inheres or at which the opportunity for effective defense must be seized or foregone." *Yohn v. Love*, 76 F.3d 508, 522 (3d Cir. 1996) (quoting *United States ex rel. Reed v. Anderson*, 461 F.2d 739, 742 (3d Cir. 1972)). The Supreme Court has also "defined the scope of the right to counsel by a pragmatic assessment of the usefulness of counsel to the accused at the particular proceeding, and the dangers to the accused of proceeding without counsel." *Patterson v. Illinois*, 487 U.S. 285, 298, 108 S.Ct. 2389, 2398 (1988) (quoting *Ash*, 413 U.S. at 313-320, 93 S.Ct. at 2575).

Having reviewed the arguments and submissions of the parties,

and in light of this Court's decisions in *Government of the Virgin Islands v. Texido*, No. 1998/030, 2000 WL 267115 (D.V.I. App. Div. Mar. 6, 2000); and *Lewis v. Government of the Virgin Islands*, 77 F.Supp.2d 681, 685 (D.V.I. App. Div. 1999), the Court finds that appellant's claim that there was a violation of his Sixth Amendment right to counsel lacks merit. The Court further finds that given the totality of the circumstances, the trial court did not err in ruling that the photographic array did not create a substantial risk of misidentification and was not unnecessarily suggestive. Accordingly, it is hereby

**ORDERED** that appellant's request for a new trial is **DENIED**;  
and finally

**ORDERED** that appellant's conviction is **AFFIRMED**.

**DONE AND SO ORDERED** this 1 day of June 2000.

**A T T E S T:**  
**ORINN ARNOLD**  
**Clerk of the Court**

By: \_\_\_\_\_/s/\_\_\_\_\_  
**Deputy Clerk**

**Copies to:**

Judges of the Appellate Panel  
Judges of the Territorial Court  
Honorable Jeffrey L. Resnick  
Honorable Geoffrey W. Barnard  
Iver A. Stridiron, Attorney General, V.I. Dept. of Justice  
Pamela Tepper, Solicitor General  
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